

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
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May 15, 2007

In the Matter of
City of Quincy

Docket No. 2007-028
File No. 59-1111
Quincy

RECOMMENDED FINAL DECISION ON RECONSIDERATION

William G. Aylward has moved to reconsider the final decision in this case which dismissed the appeal on the grounds that a petitioning group of ten residents did not exist at the time the appeal was filed, and therefore lacked standing.

A motion to reconsider may be made when a finding of fact or ruling of law is clearly erroneous. 310 CMR 1.01(14)(d). When such a motion repeats matters adequately considered in the final decision, renews claims or arguments preciously raised, or attempts to raise new claims or arguments it may be summarily denied. A party seeking to have a final decision modified on reconsideration bears a heavy burden to show that the prior result was unjustified. Matter of Billerica School Department, Docket No. 85-7, Decision on Reconsideration (March 11, 1986).

The essential findings of fact from the recommended final decision were that twenty three persons signed the page attached to the notice of claim, submitted to identify the group of residents requesting the appeal, and that seventeen of them later indicated they did not wish to appeal the permit in question or join a group with that objective. These seventeen retractions resulted in a petitioning group of less than the requisite ten persons.



The Motion for Reconsideration objects to dismissal based on the retractions contending that the response to the Order for a More Definite Statement perfected the appeal and should be allowed to proceed. The Motion also contests the circumstances, as recounted in each of the retraction statements, of how the twenty-three signatures to the appeal were obtained. Mr. Aylward further argues that the recommended final decision granted the unilateral retractions “probative force” and considered them “legal” or effective, without legal authority. The ability of a signatory to an appeal to withdraw from participating as a member of a resident group, is also questioned in the Motion, as is dismissal based on a new set of issues not identified in the Order for a More Definite Statement.

First, neither the recommended nor the final decision made any finding as to the means, motives or circumstances of how the 23 signatures on the page attached to the initial Notice of Claim were obtained. The Motion for Reconsideration contends that each signatory to the initial appeal was shown a copy of the Notice of Claim when signing, and that the Claim specifically mentions the City of Quincy High School project. Each statement of retraction states that the signers were asked to sign a “petition to preserve open space”, and that they “would not have signed the petition” if they had known it was an appeal of the Quincy High School SOC. These differing factual accounts are simply not material to the conclusions in the final decision. No matter what documents were presented to the twenty-three signatories, and what representations were made in the course of obtaining the signatures, seventeen of them have now withdrawn their participation in the group. The final decision does not rely on any findings concerning the group members’ initial motives in joining the group or make any findings about the reasons leading seventeen of the signatories to withdraw from the appeal.

Secondly, the statements of retraction have not been challenged. Mr. Aylward or the petitioning group has not claimed that the members who retracted their signatures on the appeal did not actually intend to do so, but suggest the retractions should not be credited or given legal effect. No legal argument was presented to support a conclusion that the retraction statements are void or should for some reason be stricken as legally deficient. No motion to substitute or add group members was filed. In essence, the petitioner has not contested the retractions themselves or the key finding of the recommended final decision: that the group is now comprised of less than ten residents and is too small to maintain standing.

As to the acceptance of the retractions without further examination, the agency has accepted withdrawals in the form of letters, notices, motions, and requests for dismissal. No procedural requirement in 310 CMR 1.01 exists governing the manner in which a member of a ten resident group must withdraw. There is certainly no authority under the adjudicatory hearing rules to compel an individual to continue participating in a petitioning group. I find no error of fact or law in accepting the retractions, given that no evidence was submitted to counter the retractions, and no argument presented that the retractions were erroneously interpreted or were legally insufficient.

Simply put the final decision concluded that the ten residents group did not consist of the requisite ten residents, a fundamental jurisdictional requirement which remains uncontested.

The regulatory grant of standing to appeal as a ten residents group carries with it two important conditions which the group must meet; it must consist of at least ten residents when its request for an adjudicatory hearing is filed, and it must maintain a group membership of at least ten appealing residents throughout the appeal. Both of these conditions are jurisdictional, for the Department cannot entertain a wetlands permit appeal by a ten residents group is, in fact, it does not consist of at least ten residents of the city or town where the proposed project is located.

LaBrie Stone Products, Inc., Docket No. 93-066, Final Decision Order of Dismissal (February 11, 1994).

Finally the Motion for Reconsideration suggests that the statements of representation required by the Order for a More Definite Statement were not legally required, and that the failure to provide them cannot support dismissal.¹ This argument was made and rejected in the recommended final decision. The identity of the group's members, their residency and their agreement to be represented by an appointed designee are essential components of standing and representation of such a resident group, were properly subject to an Order requiring their clarification. Failure to comply with that Order remains an alternative basis for dismissal, and I find no error of law on this point.

For the above reasons, I recommend denying the Motion for Reconsideration.

NOTICE

This decision is a recommended decision by the Presiding Officer on a motion for reconsideration. It has been transmitted to the Commissioner for her final decision on the motion. This decision is therefore not a final decision on reconsideration, and may not be appealed to Superior Court pursuant to M.G.L. c. 30A. The Commissioner's final decision on the motion for reconsideration is subject to appeal to court and will contain a notice to that effect.

Because this matter has now been transmitted to the Commissioner, no party shall file a motion to renew or reargue this recommended decision on the motion for reconsideration or any

¹ The Order required submission of a "signed affirmation by the party or each member of a ten person group, that the representative is duly authorized to represent the party in an adjudicatory appeal." 310 CMR 1.01(2)(b)

part of it, and no party shall communicate with the Commissioner's office regarding this decision unless the Commissioner, in her sole discretion directs otherwise.

Ann Lowery
Presiding Officer

Adopted by Acting Commissioner Arleen O'Donnell May 16, 2007